

REMARKS

Applicant acknowledges, with appreciation, the Examiner's suggestions that were discussed during an in-person interview on July 23, 2003 as provided in the Interview Summary Record. Applicant further acknowledges and appreciates the Examiner's suggestion with claim language. Applicant has adopted the Examiner's suggested claim language since it is supported by the specification and since the language is clear. It is noted, however, that Applicant has presented claims that require glycerin as an ingredient without prejudice to submitting claims that do not require glycerin as an ingredient either in a future response to this application or in a continuation application. In amending the claims, Applicant has made the following changes.

Claims 22-30 are currently pending in the present application, of which claim 22 is withdrawn and claims 23-30 are new. Claims 1-21 have been canceled without prejudice or disclaimer thereto.

Adequate written descriptive support for the new claims can be found throughout the detailed specification. For example, on page 4 Applicant discloses in one embodiment of the inventive compositions that the active ingredients include a homoglycan in combination with glycerin. On page 6, Applicant discloses that a preferred homoglycan is beta glucan which can be used in a preferred amount of 0.1% to 2.5% by weight and that homoglycans can be combined with glycerin. On page 12, Table 2, Applicant discloses examples of the amounts of the ingredients in a preferred composition. Hence, claims 23 and 24 find adequate written descriptive support in this disclosure. Claim 25 is also supported by the detailed specification as, for example, by Table 2 where Applicant lists a variety of nutritional ingredients in the amount now claimed. Applicant also lists antibacterial,

astringent, and anti-inflammatory ingredients as well as lubricants and flavorings, which are also identified as essential oils in the specification on pages 9-10. Applicant further lists in Table 2 several surfactants which total approximately 10 wt% and several preservatives that total in weight up to 0.4 wt%. Claim 26 finds support in at least Table 2. Claim 27 finds support as discussed for claim 23 above and Table 2. Claim 28 is the same as claim 25 except that claim 28 uses the closed transitional phrase "consisting of" to identify the ingredients of the composition. Claim 29 finds support as discussed above and claim 30 finds support in at least Table 3. Accordingly, it is respectfully submitted that the new claims do not raise any new matter issues. Entry of the claims is respectfully solicited.

In the Office Action, the Examiner rejected various active claims. Applicant has cancelled claims 1-21. Consequently, all of the objections and rejections to these claims are now moot.

Applicant has herewith submitted new claims 23-30. All of these composition claims require approximately 0.1 to 2.5 wt% of oat beta glucan and glycerin, which is present in an amount of no more than about 40 wt%. Independent claims 22 and 27 use the transitional phrase "consisting essentially of" to limit the scope of these claims to the specified ingredients and those ingredients that do not materially effect the basic and novel characteristics of the claimed subject matter. Applicant is using this transitional phrase consistent with MPEP 2111.03 (revised Feb. 2003). As disclosed in Applicant's specification on page 5, beginning at line 26, homopolysaccharides are distinct from other polysaccharides. Various examples are given of homopolysaccharides, including oat beta-glucan. Applicant notes that the homopolysaccharides included in the claimed subject matter are characterized by having repeating units of one type of saccharide. This is distinct

from other polysaccharides, which can contain two or more different types of saccharide units along the backbone of the polymer chain. Hence, Applicant has identified, in the specification, that which materially changes the basic and novel character of the now claimed compositions and respectfully submits that the specification makes clear that Applicant's now claimed subject matter excludes other types of polysaccharides.

Claims 28-30 use the closed-ended transitional phrase "consisting of" to recite the various ingredients of the composition, which requires oat beta glucan and glycerin.

It is respectfully submitted that claims 22-30 are novel and non-obvious over the cited art. For example, Stillman (6,248,390), discloses water containing soluble fibers including oat beta glucans (column 3, line 46). The claimed subject matter, however, is distinct from Stillman in that it requires oat beta glucan and glycerin in the recited amounts and excludes certain other polysaccharides disclosed by Stillman. Andermann (5,516,765) teaches the type of polysaccharides that Applicant excluded from the claims. Chen (6,210,738) does not appear to disclose any polysaccharides, let alone oat beta glucan and glycerin in the amounts recited in the pending claims. Mitchell (6,187,318) does not appear to have recognized the benefit of using homopolysaccharides, let alone oat beta glucan as recited in the pending claims.

Applicant also provides herewith an Information Disclosure Statement, which includes several references that may be of interest to the Examiner in the examination of this application. Applicant discussed the Hunter (6,159,459) reference with the Examiner at the interview and noted that Hunter discloses glucan polymers for oral lubricating compositions. In particular, Applicant pointed to column 4 of this reference during the interview. Hunter, however, does not disclose oat beta glucan as required in the pending claims.

Applicant is providing a reference written in the German language (EP 0 137 302), which was identified in an International Search Report. Applicant is also providing a copy of the Report, which was based on original claims 1-22. The other references in this Report were submitted by Applicant in an IDS on August 16, 2002.

Based on the foregoing, Applicant respectfully submits that the claims now in the application are patentable within the meaning of 35 U.S.C. §§ 102/103. Accordingly, favorable consideration and allowance of the application are respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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